

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 91-452-S - ORDER NO. 91-1135 ✓  
DECEMBER 17, 1991

IN RE: Shumaker Land Co., Inc.,	)	
	)	
Complainant,	)	
	)	
vs.	)	ORDER
	)	
Midlands Utility, Inc.,	)	
	)	
Respondent.	)	
	)	

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This matter is before the Public Service Commission of South Carolina (the Commission) on the complaint filed by Complainant Shumaker Land Company, Inc. (Shumaker) against Respondent Midlands Utility, Inc. (Midlands) due to Midlands' refusal to sell it 76 sewer taps at \$500 per tap. Shumaker claims it has the right to purchase 76 sewer taps from Midlands for \$500 each under a contract which was previously approved by the Commission and approved on appeal by the South Carolina Supreme Court.

Midlands contends that Shumaker has no right to purchase any sewer taps under the terms of its contract. Instead, Midlands asserts that the South Carolina Supreme Court affirmed the contract only as it applied to taps to be purchased by a third party to the contract, South Woodside Parkway (SWP).

On November 20, 1991, the Commission heard the oral arguments

of the Complainant and Respondent. The Honorable Marjorie Amos-Frazier presided at the arguments. Shumaker was represented by Henry W. Brown, Esquire. Midlands was represented by William E. Booth, III, Esquire.

For the most part, the factual history which gives rise to Shumaker's complaint is undisputed. Accordingly, the Commission will briefly enumerate the relevant factual history.

1. In 1986, Midlands, SWP, and Richard T. Conly (Conly) entered into a contract in which Midlands agreed to sell SWP and Conly sewer taps for their undeveloped lots. Relevant portions of the contract provide as follows:

6. Payment of Tap Fees. For all lots developed within the property owned by SWP and Conly, Midlands agrees not to charge any tap fee at the time service is requested, except as provided in Paragraph 9 hereof.

7. Payment of Plant Expansion and Modification Fee. For lots developed within the property owned by SWP and Conly, Midlands shall charge the plant expansion [sic: and] modification fee as then approved by the Public Service Commission. Midlands represents that as of the date of this Agreement the approved plant expansion and modification fee is \$250/lot.

9. Sewer Agreement with City of Cayce. Midlands has entered into a sewer agreement with the City of Cayce ("Cayce"), dated November 14, 1984, a copy of which is attached hereto as exhibit "B." Under this agreement, Midlands may elect to request certain taps at the commencement of service and thereby reserve certain capacity. Midlands agrees that SWP and Conly may participate in the initial request for treatment plant capacity. SWP and Conly agree to participate to the extent of two hundred sixty (260) taps at \$200/tap, and agree to pay Cayce this amount under terms as described in paragraph B of exhibit "B." A separate agreement will be prepared and executed between the parties and presented to Cayce to advise Cayce of the reservation of capacity between the parties and guarantee the availability of this sewer capacity for the property. In the event any dispute arises between the parties and

Cayce with respect to the rights of SWP and Conly under this agreement, Midlands will assign its rights to enforce the agreement with Cayce to SWP and Conly.

2. Midlands sought Commission approval of the contract. Midlands interpreted the contract as requiring SWP and Conly to pay whatever tap fee was presently being charged to it by the City of Cayce<sup>1</sup> in addition to the \$250 plant expansion and modification fee. SWP and Conly interpreted the contract as requiring them to pay Midlands \$250 as a tap fee and \$250 as the plant expansion and modification fee.

3. By Order No. 88-190, Docket No. 87-433-S (February 18, 1988), the Commission approved the parties' contract. The Commission interpreted the contract as providing that SWP and Conly could purchase sewer taps for a fee of \$250 as a tap fee and \$250 as the plant expansion and modification fee.

4. In April 1988 SWP sought to purchase 56 taps for \$500 each. Midlands refused to sell these taps because at that time there were no residences which would be served by the taps. (By this time the City of Cayce had increased its tap fee to Midlands to \$750 and Midlands had filed with the Commission for an increase in its plant expansion and modification fee).<sup>2</sup> As a result, SWP sought an order from the Commission compelling Midlands to sell it

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1. The City of Cayce provides sewer treatment service for Midlands and charges Midlands a tap fee and treatment fee for this service. At the time of the submission of the contract, the City of Cayce's tap fee was \$500 per tap.

2. By Order No. 88-1029, Docket No. 88-269-S (October 4, 1988), Midlands' plant expansion and modification fee was increased to \$750.

56 taps at \$500 each in advance of its actual development. Conly did not intervene in this action.

5. By Order No. 88-1076, Docket No. 88-269-S, (October 18, 1988), the Commission determined Midlands was not required "to sell taps for the future development of this [SWP's] property." Order p. 14. The Commission reiterated that when SWP requested a tap fee from Midlands, it was required to pay \$250 for a tap fee and \$250 for a plant expansion and modification fee for a total of \$500 per tap.

7. In the meantime, Shumaker had purchased the tract of land owned by Conly and was assigned Conly's rights in his contract with SWP and Midlands.

8. Midlands appealed the orders of the Commission. Midlands asserted the contract did not limit it to receipt of \$500 per tap. SWP intervened as a party-defendant. Shumaker did not intervene in this appeal. The Circuit Court affirmed the Commission's Orders.

9. Midlands appealed to the South Carolina Supreme Court. As reflected in the Statement of the Case, "[t]he sole issue raised in this appeal is the amount of the plant expansion and modification fee to be charged by Midlands Utility, Inc. ("Midlands") under the written agreement." On November 14, 1990, the Supreme Court issued a Memorandum Opinion affirming the Commission's Orders.

10. Midlands filed a Petition for Rehearing. Midlands asserted that, during oral argument before the Court, the Commission's attorney stated that the appeal was only applicable to

SWP's 56 taps and that Midlands could increase the plant expansion and modification fee for other taps purchased under the contract.

11. On January 21, 1991, the Supreme Court issued an Amended Memorandum Opinion again affirming the Commission's Orders. This Opinion contains the additional statement, "[a]s conceded by Respondents' counsel at oral argument, the order below applies only to the 56 taps currently sought by South Woodside Parkway; beyond these taps, Midlands is authorized to charge whatever fee it is being charged by the City of Cayce."

After full consideration of the above-referenced facts, the briefs submitted, and of the arguments submitted by both parties, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Shumaker asserts that its right to purchase 76 taps at \$500 each, as approved by two Commission orders, is not affected by the Supreme Court's Amended Memorandum Opinion. Shumaker asserts that the Amended Memorandum Opinion merely limits it to purchasing 76 taps under the contract and SWP to purchasing 56 taps under the contract.

2. Midlands asserts that, as requested in its Petition for Rehearing, the Supreme Court's Amended Memorandum Opinion clarified the amount Midlands was authorized to charge for taps beyond the 56 taps sought by SWP. Midlands contends that, by its Amended Memorandum Opinion, the Supreme Court authorized it to charge whatever fee the City of Cayce was charging, except as to the 56

taps which could be purchased by SWP under its contract with Midlands.

CONCLUSIONS OF LAW

1. Based on the conflicting interpretations that have been presented by Shumaker and Midlands, the Commission finds that the meaning of the additional sentence in the Supreme Court's Memorandum Opinion is unclear.

2. The Commission finds that the most reasonable interpretation of the Amended Memorandum Opinion is that SWP can purchase no more than 56 taps under the terms of the contract and, likewise, Shumaker can purchase no more than 76 taps.<sup>3</sup> The Commission finds that the language "beyond these taps" refers to SWP's purchase of more than 56 taps and to Shumaker's purchase of more than 76 taps.

3. The Commission concludes that its interpretation of the Supreme Court's Amended Memorandum Opinion is appropriate for the following reason: if the Supreme Court had found that Shumaker had no right to purchase any taps under the contract, that decision would have been contrary to the Commission's orders on appeal. Consequently, the Supreme Court would have reversed that portion of the Commission's Orders which approved Shumker's rights to purchase sewer taps under its contract with Midlands. Instead, the Amended Memorandum Opinion affirmed in full the Commission's Orders.

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3. Midlands has never objected to Shumaker's assertion that, if entitled to purchase any taps under the contract, Midlands is entitled to purchase 76 taps.

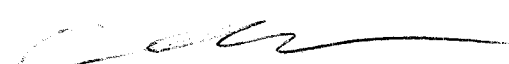
IT IS THEREFORE ORDERED:

1. Midlands is hereby compelled to sell a total of 76 sewer taps at \$500 each at such time as Shumaker applies for the taps.
2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
VICE Chairman

ATTEST:

  
Deputy Executive Director

(SEAL)